



U.S. POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Office of the Secretary

April 16, 2013

Karen Toole, City Clerk
City of Climax Georgia
105 Drane Street
Climax, GA 39834

RE: Appeal of the Postal Service's Determination to Close the Climax Post Office,
Climax, Georgia

Dear Ms. Toole

Enclosed please find a copy of Order No. 1693 granting the Postal Service's
request to dismiss the proceeding.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ruth Ann Abrams", written over the word "Sincerely,".

Ruth Ann Abrams
Acting Secretary

Enclosure

ORDER NO. 1693

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Climax Post Office
Climax, Georgia

Docket No. A2013-3

ORDER GRANTING MOTION TO DISMISS
(April 8, 2013)

I. INTRODUCTION AND SUMMARY

On December 11, 2012, the Commission received a petition for review of the closure of the Climax, Georgia post office (Climax post office) from Karen Toole (Petitioner).¹ She contends that the Climax post office is closed and that the Postal Service did not follow required procedures.

¹ Petition for Review Received from Karen Toole Regarding the Climax, GA Post Office 39834, December 11, 2012 (Petition).

On December 21, 2012, the Postal Service filed a motion to dismiss this proceeding for lack of jurisdiction.² Because no final determination has been issued, the Motion is granted.

II. PROCEDURAL HISTORY

In Order No. 1576, the Commission established Docket No. A2013-3 to consider the appeal, designated a Public Representative, and directed the Postal Service to file the administrative record or a responsive pleading.³ The Motion was filed in response to this directive.

On January 3, 2013, the Public Representative filed comments.⁴ On January 11, 2013, Morgan Wolaver, former lessor of the Climax post office, filed a Participant Statement.⁵ On January 14, 2013, Petitioner filed comments in opposition to the Motion.⁶

III. BACKGROUND

The Climax post office, an EAS-16 level facility, provided retail postal services and service to 999 customers and 162 post office box customers. Motion, Attachments 1, 2. The Climax post office had been a candidate facility under the Post Office Structure Plan (POStPlan), an initiative to match post office retail hours with workload.⁷ In July or August of 2012, the Postal Service entered negotiations for a new lease on

² Motion of United States Postal Service to Dismiss Proceedings, December 21, 2012, at 3 (Motion).

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 12, 2012 (Order No. 1576).

⁴ Initial Comments of the Public Representative, January 3, 2013 (PR Comments).

⁵ Participant Statement, January 11, 2013 (Wolaver Statement). The Wolaver Statement was accompanied by a motion for late acceptance. That motion is granted.

⁶ Comments of Karen Toole, Petitioner, January 14, 2013 (Petitioner Comments).

⁷ *Id.* at 2. See Docket No. N2012-2, Advisory Opinion on Post Office Structure Plan, August 23, 2012, at 1 (Advisory Opinion).

the building housing the Climax post office. Petition, Attachment 1 at 1; Motion, Attachment 1. The existing lease was scheduled to terminate on October 31, 2012. Petition, Attachment 1 at 1. Initially, the Postal Service proposed a five-year lease at the existing rent of \$11.84 per square foot with a 365-day termination clause. *Id.* On July 25, 2012, the lessor countered with three options, one of which added a clause to the Postal Service's proposal that would prevent use of the 365-day termination clause during the first year of the lease. *Id.*

The Postal Service then sought to reduce the rent from \$11.84 per square foot to \$8.50 and to change the 365-day termination clause to a 60-day termination clause. Motion, Attachments 1, 3. On September 13, 2012, the Postal Service sought a 30-day extension of the lease in order to establish a Village Post Office (VPO) in Climax. Petition, Attachment at 1.⁸ Negotiations reached an impasse with the lessor offering \$8.75 per square foot for five years and no termination clause. *Id.*; Motion, Attachment 1.

On September 17, 2012, a public notice was posted on the Climax post office door stating that the Postal Service would hold a meeting on November 8, 2012, to answer questions and provide additional information about the POSTPlan. Petition at 2. By letter dated September 28, 2012, the Postal Service informed customers that it intended to reduce weekday hours of operation at the Climax post office to 6 hours. Petition, Attachment dated September 28, 2012. Enclosed with the letter was a survey questionnaire, the results of which would "help determine the best course of action for providing postal services to" Climax. *Id.* However, on October 19, 2012, a letter displayed on the door of the Climax post office announced that service would be suspended as of October 31, 2012. Petition at 1. On October 25, 2012, a flyer was

⁸ VPOs are non-Postal Service owned and operated establishments that sell Forever stamps and prepaid Priority Flat Rate Boxes and envelopes. Advisory Opinion at 29 n.44. They are not expected to be full-service post offices, although some VPOs are expected to have post office boxes serviced by Postal Service employees. *Id.*

posted on the Climax post office door stating that service would be suspended October 31, 2012, and that a VPO would soon be opened. *Id.*

Operations at the Climax post office were suspended on October 31, 2012. Motion at 2. As a result, the Postal Service initiated a discontinuance study on November 1, 2012. Motion, Attachment 2. On November 8, 2012, representatives of the Postal Service met with customers of the Climax post office. *Id.* at 2. The Postal Service representatives "informed customers that operations had been suspended due to failed lease negotiations." *Id.*

Attached to the Motion is a copy of a letter dated December 4, 2012. The letter explains the reason for the suspension and provides alternate locations where postal services could be obtained. *Id.* Attachment 3.⁹ It informed customers that the Climax post office would be studied for discontinuance under suspension. *Id.* Because the Climax post office was suspended, it was no longer a candidate facility under the POSTPlan. Motion at 3. On January 2, 2013, Climax customers received a letter and a survey regarding changes in postal service. Petitioner Comments at 1.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner asserts that the Postal Service failed to provide the citizens of Climax adequate notice on the closing of the Climax post office. Petition at 2. She also states that the Postal Service did not consider the effect on the community of closing the post office and that the replacement service (a VPO) is inadequate. *Id.* at 2. She contends that the VPO is not handicapped accessible and is unsafe for the elderly. *Id.* at 2-3. She alleges that representatives of the Postal Service misled customers about reopening a post office in Climax. *Id.*; Petitioner Comments at 1. Specifically, she states that at the November 8, 2012 public meeting, a representative of the Postal Service said "that the Postal Service would still talk to [the lessor] about the lease on the

⁹ Attachment 3 is an unsigned "Dear Postal Customer" letter dated December 4, 2012. It appears to be incomplete to the extent that it neither identifies the replacement post office nor acknowledges the availability of Centralized Box Units near the VPO in Climax, GA. See Petition, Attachments 3 and 5.

building and it was possible that the Post Office would reopen in this building or another building in this area.” Petition at 2. But when the lessor approached the Postal Service after the meeting, the Postal Service “was not interested in reopening the post office in [the lessor’s] building.” *Id.* at 3.

Lessor. Morgan L. Wolaver, the lessor, asserts that the suspension of the Climax post office is a *de facto* closing. Wolaver Statement at 1. He states, “The suspension of the Climax, Georgia, Post Office is an ‘emergency’ manufactured by the Postal Service to reach its foreordained result: the closing of the Climax Post Office.” *Id.* He alleges that the Postal Service acted in bad faith when negotiating a new lease for the building housing the Climax post office. *Id.* at 2. He contends that the Postal Service was aware as early as September 13, 2012 that it would replace the Climax post office with a VPO. *Id.* at 3. The Postal Service nevertheless informed customers on September 17, 2012 that it was planning to reduce operating hours at the Climax post office as an alternative to closing it. *Id.* He states that his building is the only available facility in Climax for a post office. *Id.* at 2. He asserts that when he sought to restart negotiations for the lease on his building after the November 8, 2012 public meeting, “the Postal Service was not willing to re-enter negotiations.” *Id.* at 1-2.

Public Representative. The Public Representative supports dismissal of this appeal. He states that “it appears that the Postal Service is continuing to provide adequate postal services to the citizens of Climax.” PR Comments at 2. He notes that the Postal Service promptly commenced a discontinuance study and does not appear to be abusing its suspension procedures. *Id.* He suggests that the Commission “monitor the progress of the discontinuance feasibility study to ensure prompt completion.” *Id.*

Postal Service. The Postal Service moves to dismiss the appeal on the ground that the Climax post office is suspended, not discontinued. The Postal Service asserts that “no appealable event has occurred” and that the appeal should be dismissed as premature. Motion at 3-4. It states that “no final decision has been made to close the Climax Post Office.” *Id.* at 3. It does not address the possibility of a *de facto* closing raised by the former lessor of the Climax post office.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; and (b) without observance of procedure required by law; or (c) unsupported by substantial evidence on the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service determination by substituting its judgment for that of the Postal Service.

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. *Id.* section 404(d)(5).

The Postal Service has not yet issued a final determination to close the Climax post office. Motion at 2. Rather, it has suspended operations and, in the interim, provided postal services to the Climax community through a nearby post office and a VPO. Under the circumstances, the Commission cannot conclude that the Postal Service's actions constitute a closure subject to section 404(d). The Motion is granted; the Petition is dismissed without prejudice.

The Climax post office was a candidate post office under the POSTPlan before it was suspended due to failed lease negotiations. The failed lease negotiations led to the emergency suspension. In its Advisory Opinion, the Commission observed that lease negotiations may trigger a suspension or discontinuance of POSTPlan offices. Advisory Opinion at 48. The Postal Service stated, “when negotiating the renewal of leases, it will consider changes in the market lease rates applicable to a post office location and negotiate a rate that is fair and reasonable and serves the best interest of the Postal Service.” *Id.* However, it assured the Commission it “has no plan for using the lease negotiation process as a pretext to close Post Offices.” *Id.* at 49.

The Commission reiterates its recommendation in the Advisory Opinion that field personnel receive sufficient guidance on the circumstances in which operational needs will require the Postal Service to initiate an emergency suspension or discontinuance study. *Id.* To that end, the Commission recommended that “[t]he instructional memorandum to area vice presidents and district managers should explain that every effort should be made to locate qualified staff or successfully negotiate a lease before overriding a community’s preference for a post office with realigned hours.” *Id.*¹⁰

While the Climax post office is suspended, service will be provided by a nearby post office and a VPO. The Postal Service has stated that it does not plan to close a POSTPlan office if a local business contracts with the Postal Service to serve as a VPO. Advisory Opinion at 50. It asserted that it is “aggressively working to establish [VPOs] in affected communities as *supplemental* access to postal customers, and not only as a replacement option.” *Id.* (emphasis added). The Postal Service should consider these

¹⁰ Lease negotiations began sometime during the summer of 2012. The start date and what was initially offered are in dispute. See Petition, Attachment 1; Motion, Attachment 1. The negotiations failed; and Lessor contends that the Postal Service did not negotiate in good faith. Wolaver Statement at 2. Lessor also argues that the Postal Service’s actions constitute a *de facto* closing of the Climax post office. *Id.* at 1. The establishment of a VPO in Climax does not mean or require the discontinuance of the Climax post office. See Advisory Opinion at 50 (“Under the POSTPlan, POSTPlan post offices will continue notwithstanding the presence of a VPO, which the Postal Service is offering in conjunction with POSTPlan post offices.”). While a discontinuance study has been initiated, the possibility exists that negotiations may resume and operations continued at the Climax post office.

policies before suspending any post office subject to the POSTPlan due to failed lease negotiations. *Id.* at 49.

It is ordered:

1. The Motion of United States Postal Service to Dismiss Proceedings, dated December 21, 2012, is granted.
2. The Petition for Review, filed December 11, 2012, is dismissed without prejudice.

By the Commission.

Shoshana M. Grove
Secretary

CONCURRING OPINION OF COMMISSIONER LANGLEY

I concur. I write separately to express my concern that the Postal Service has not communicated its plans clearly to the community.

39 U.S.C. § 404(d)(5) confers a right of appeal, following the Postal Service's final determination to close a post office, to any person served by that post office. The Postal Service has not made a final determination to close the Climax, Georgia post office, and it appears that the office is currently undergoing discontinuance procedures.

I emphasize that the dismissal in this case is without prejudice; therefore, should the Postal Service make a final determination to close the Climax, Georgia post office, any person served by that office may appeal the closing.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

I would not grant the motion to dismiss.

The sequence of events that led to the suspension of service at the Climax post office is troubling. First, the description of negotiations offered by the lessor lends some credence to the assertion that “suspension of the Climax, Georgia, Post Office is an ‘emergency’ manufactured by the Postal Service to reach its foreordained result: the closing of the Climax Post Office.” Wolaver Statement at 1.

Second, Petitioner raises concerns that the citizens of Climax were not provided adequate notice on the closing of the Climax post office and alleged that representatives of the Postal Service misled customers about the possibility of reopening the post office. Petition at 2; Petitioner Comments at 1.

Third, the Postal Service provided confusing and contradictory information to the Climax, Georgia community in its notices and in community meetings. The Postal Service in its community meetings promised shorter hours within the framework of its POSTPlan, which specifies that Village Post Offices (VPOs) are supplementary to (not substitutes for) post office operations.

In sum, these actions did not fully inform members of the Climax community regarding plans for the Climax post office, and appear to be inconsistent with the implementation of POSTPlan. While lease negotiations may trigger a suspension or discontinuance of POSTPlan offices, see Advisory Opinion at 48, the Postal Service assured the Commission that lease negotiations would not serve as a pretext to close a post office. *Id.* at 49. While the Postal Service is obligated to “negotiate a rate that is fair and reasonable and serves the best interest of the Postal Service,”¹¹ in doing so, it cannot ignore the needs of the community. The record shows that lease negotiations

¹¹ *Id.* at 48

ended with the parties \$0.25 per square foot apart. Whether they should have been able to bridge that difference, I am not prepared to say.

Moreover, the existence of the VPO should have no bearing on the outcome of negotiations. It bears repeating that in Docket No. N2012-1, the Postal Service assured the Commission that it was “aggressively working to establish [VPOs] in affected communities as *supplemental* access to postal customers, and not only as a replacement option.” *Id.* at 50 (emphasis added).

As the Postal Service continues to readjust retail hours at post offices under the POSTPlan, it needs to provide clear, timely, and understandable notification of the Postal Service’s actions regarding a community’s post office. It did not do so in this instance.